

1 Reed R. Kathrein (139304)
2 Peter E. Borkon (212596)
3 HAGENS BERMAN SOBOL SHAPIRO LLP
4 715 Hearst Avenue, Suite 202
5 Berkeley, CA 94710
6 Telephone: (510) 725-3000
7 Facsimile: (510) 725-3001
8 reed@hbsslaw.com
9 peterb@hbsslaw.com

10 Steve W. Berman (admitted *Pro Hac Vice*)
11 HAGENS BERMAN SOBOL SHAPIRO LLP
12 1918 8th Avenue, Suite 3300
13 Seattle, WA 98101
14 Telephone: (206) 623-7292
15 Facsimile: (206) 623-0594
16 steve@hbsslaw.com

17 *Counsel for Plaintiffs and Proposed Lead
18 Counsel for the Class*

19 [Additional counsel appear on signature page.]

20 **UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA**

22 BRUCE MACDONALD, Individually and on
23 Behalf of All Others Similarly Situated,

24 Plaintiff,

25 v.

26 DYNAMIC LEDGER SOLUTIONS, INC., a
27 Delaware corporation, TEZOS
28 STIFTUNG, a Swiss Foundation,
KATHLEEN BREITMAN, an
Individual, ARTHUR BREITMAN,
an Individual, TIMOTHY COOK DRAPER, an
individual, DRAPER ASSOCIATES, JOHANN
GEVERS, DIEGO PONZ, GUIDO SCHMITZ-
KRUMMACHER, BITCOIN SUISSE AG,
NIKLAS NIKOLAJSEN and DOES 1-100,
INCLUSIVE,

29 Defendants.

30 Case No. 3:17-cv-07095-RS

31 **CERTIFICATION REGARDING
32 NOTICE**

1 Where a plaintiff seeks a temporary restraining order without notice, the movant's attorney
 2 must, *inter alia*, "certif[y] in writing any efforts made to give notice and the reasons why it should
 3 not be required." Fed. R. Civ. Proc. 65(b)(1)(B).

4 ND Cal Civ Local R 65-1(b) further states:

5 "Unless relieved by order of a Judge for good cause shown, on or before
 6 the day of an ex parte motion for a temporary restraining order, counsel
 7 applying for the temporary restraining order must deliver notice of such
 motion to opposing counsel or party."

8 I, Reed Kathrein, counsel to movant Bruce MacDonald hereby certify as follows:

9 **A. Plaintiff Has Made Best Efforts To Give Actual Notice of This Application**

10 Plaintiff has given notice or attempted to give notice to each of the Defendants of the date and
 11 substance of this Application by sending a copy of the complaint and this Application at
 12 approximately 3:15 p.m. PST on Wednesday, December 13, 2017 and by following up with a phone
 13 call or voicemail to counsel (if known) to each of the Defendants as follows. Each notice sent to
 14 Defendants additionally informed the party or counsel of all substantive information known to
 15 Plaintiffs regarding this Application, namely: the intention to seek a TRO, the date and approximate
 16 time known to Plaintiffs (morning of December 14, 2017), and the nature of the relief to be
 17 requested. Plaintiffs made extensive efforts to obtain all available contact information for each of the
 18 Defendants in the short time frame necessitated by the relief requested by reviewing counsel
 19 appearances in the related actions, and publicly available information regarding Defendants and/or
 20 their representation by counsel.

21

- 22 • **DYNAMIC LEDGER SOLUTIONS, INC.:** Notice of this Application was sent via
 23 email to counsel representing Defendant Dynamic Ledger Solutions, Inc. in the related
 24 action as follows:

25
 26 Daniel Louis Sachs
 27 COOLEY LLP
 28 1299 Pennsylvania Ave NW

Suite 700
Washington, DC 20004
Telephone: (202) 728-7114
Facsimile: (202) 842-7899
Email: dsachs@cooley.com

Jeffrey Michael Kaban
Patrick Edward Gibbs
Samantha Anne Kirby
COOLEY LLP
3175 Hanover Street
Palo Alto, CA 94304
Telephone: (650) 843-5000
Facsimile: (650) 849-7400
Email: kabanjm@cooley.com
pgibbs@cooley.com
skirby@cooley.com

On December 13, 2017, Patrick Gibbs, counsel for Dynamic Ledger Solutions replied by email stating that Dynamic Ledger Solutions “will oppose any application for a temporary restraining order, and we wish to be heard in opposition to any such application.” A copy of Mr. Gibbs’ email is attached hereto as Exhibit A.

- **KATHLEEN BREITMAN:** Notice of this Application was sent via email, as well as with a follow-up voicemail, to counsel representing Defendant KATHLEEN BREITMAN as follows:

Brian E. Klein (258486)
Scott M. Malzahn (229204)
BAKER MARQUART LLP
2029 Century Park East, Suite 1600
Los Angeles, CA 90067
Telephone: (424) 652-7814
Facsimile: (424) 652-7850
Email: bklein@bakermarquart.com
smalzahn@bakermarquart.com

- **ARTHUR BREITMAN:** Notice of this Application was sent via email, as well as with a follow-up voicemail, to counsel representing Defendant ARTHUR BREITMAN as follows:

Brian E. Klein (258486)

Scott M. Malzahn (229204)
BAKER MARQUART LLP
2029 Century Park East, Suite 1600
Los Angeles, CA 90067
Telephone: (424) 652-7814
Facsimile: (424) 652-7850
Email: bklein@bakermarquart.com
smalzahn@bakermarquart.com

- **TIMOTHY COOK DRAPER:** Notice of this Application was sent via email to all known email addresses of Defendant TIMOTHY COOK DRAPER as follows:
plans@draper.vc; timothy@dfj.com; mail@drapervc.com; timothy.draper@msn.com; tim@drapervc.com; tdraper@prosper.com; and tim@prosper.com.
- **DRAPER ASSOCIATES:** Notice of this Application was sent via email to all known email addresses of Defendant DRAPER ASSOCIATES as follows:
plans@draper.vc; timothy@dfj.com; mail@drapervc.com; timothy.draper@msn.com; tim@drapervc.com; tdraper@prosper.com; and tim@prosper.com.
- **TEZOS STIFTUNG (aka TEZOS FOUNDATION):** Notice of this Application was sent via email to all known email addresses and contact information of Defendant TEZOS STIFTUNG as follows:
Contact@tezos.ch; support@tezos.ch.
- **JOHANN GEVERS:** Notice of this Application was sent via email to all known email addresses and contact information of Defendant JOHANN GEVERS as follows:
johann@gevers.net; johann@monetas.net; jgevers@monetas.net;
johann.gevers@monetas.net; johanngovers@monetas.net.
- **DIEGO PONZ:** Notice of this Application was sent via email to all known email addresses and contact information of Defendant DIEGO PONZ as follows:
Contact@tezos.ch; support@tezos.ch
- **GUIDO SCHMITZ-KRUMMACHER:** Notice of this Application was sent via email to all known email addresses and contact information of Defendant GUIDO SCHMITZ-KRUMMACHER as follows:
guido.schmitz-krummacher@krummacher.com; guido.schmitz-

krummacher@talentory.com; guido@addcon.nl; guidoschmitzkrummacher@addcon.nl;
gschmitzkrummacher@addcon.nl; guidos@addcon.nl;
guido.schmitzkrummacher@addcon.nl.

- **BITCOIN SUISSE AG:** Notice of this Application was sent via email to all known email addresses and contact information of Defendant BITCOIN SUISSE AG as follows: inquiry@bitcoinsuisse.ch.
- **NIKLAS NIKOLAJSEN:** Notice of this Application was sent via email to all known email addresses and means of contact information of Defendant NIKLAS NIKOLAJSEN as follows: inquiry@bitcoinsuisse.ch; via Twitter message at [@nikolajsen_btcs](https://twitter.com/nikolajsen_btcs); via LinkedIn <https://www.linkedin.com/in/niklas-nikolajsen-0a452848/>; and via Facebook message <https://www.facebook.com/nnikolajsen>

Aside from Mr. Gibbs (counsel for DLS), no other Defendant or counsel for Defendant has responded or indicated their opposition to this TRO Application.

B. Notice Should Not Be Required

Notwithstanding Plaintiffs' best efforts (described above) to provide notice to the opposing counsel or parties in this action, good cause exists to relieve Plaintiffs of any duty to provide notice. Notice should not be required for all the reasons set forth in the accompanying Application, which are incorporated by reference as though fully set forth herein.¹ In particular, it is necessary for this Court to take immediate action without notice to Defendants because:

- Given the nature of the cryptocurrency assets held by Defendants, Defendants could, in a matter of minutes, abscond with the entirety of the ICO proceeds by transferring, converting or selling the assets to unidentifiable and untraceable third parties. This is a very real possibility should Defendants feel that their ill-gotten gains are threatened.
- Many of the named Defendants are resident in Switzerland and appear to have chosen that location specifically as an (ultimately unsuccessful) means of attempting to evade U.S.

¹ Capitalized terms below have the same meaning as in the Application.

1 securities regulations. Plaintiff intends to move expeditiously to effect service but there
 2 will likely be delays in serving some or all of the foreign Defendants.²

- 3 • Plaintiff and the putative class cannot afford to wait. The remedy they seek is a rescission
 4 of the Bitcoin, Ethereum and other cryptocurrency assets paid in the Tezos ICO. And
 5 those assets are being dissipated already. Defendants Arthur and Kathleen have accused
 6 Defendant Gevers of “self-dealing, self-promotion, and conflicts of interest.” The
 7 Breitmans suggested further that Gevers was “enriching” himself through an unjustified
 8 seven-figure “bonus.” Gevers has fired back—accusing the Breitmans of “character
 9 assassination,” “misleading statements and outright lies” and accusing his fellow board
 10 members, Ponz, and Schmitz-Krummacher of an “illegal coup.” The Foundation appears
 11 to have fired its auditors and has provided no explanation why.
- 12 • Moreover, Defendants have also stated their intent to spend at least \$50 million on
 13 “investments” into Tezos-related companies, and to spend additional Tezos foundation
 14 assets obtained from the ICO on personal legal fees related to this and other actions.
- 15 • Most critically: two days ago—December 12, 2017—Reuters reported that Defendant
 16 Schmitz-Krummacher had resigned from the three-member board of the Tezos
 17 Foundation—the entity that currently holds the investor funds at issue. Schmitz-
 18 Krummacher’s replacement will be handpicked by Defendant Gevers. By choosing a
 19 compliant director, Gevers can gain effective majority control of the Tezos Foundation’s
 20 board—creating a significant risk to the assets that rightfully belong to Plaintiff and other
 21 class members.

22 Accordingly, for the reasons outlined above, notice should not be required. Nonetheless,
 23 Plaintiffs have made every possible effort to provide all the notice feasible without unnecessarily
 24 delaying the request for relief. Any further attempts to give notice to Defendants will inevitably be
 25 objected to as insufficient, meanwhile Defendants will have more time to engage in the exact same
 26 looting and dissipation of ICO proceeds complained of in the accompanying TRO Application.
 27 Without immediate judicial intervention, Defendants may completely consume or dissipate the
 28 illegally obtained ICO proceeds, leaving Plaintiff and the Class with no remedy.

29
 30 Dated: December 14, 2017

/s/ Reed Kathrein
 31 Reed Kathrein

32
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 34 ² Pursuant to Rules 4(f)(3) and 4(h)(2) of the Federal Rules of Civil Procedure, Plaintiff intends
 35 to seek leave of Court to serve foreign defendants through electronic service rather than the Hague
 36 Convention process. *See generally Rio Properties, Inc. v. Rio Int'l Interlink*, 284 F.3d 1007 (9th Cir.
 37 2002).”